IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

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| THE SAUNDERS GROUP, an Oregon limited liability company,<br><br>Plaintiff,<br><br>vs.<br><br>KRISTIN HILDEBRAND, an individual, RYAN HILDEBRAND, an individual, GABRIELLE HARRIS, an individual, and HARRIS EXCAVATION, INC., an Oregon Corporation,<br><br>Defendants. | No 24CV41934<br><br>PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS<br><br>Oral Argument Requested |

Plaintiff The Saunders Group ("Saunders") hereby opposes Defendants' Motion for Judgment on the Pleadings. Prior property owner Bob Osborne ("Osborne") explicitly reserved a right to conduct reclamation activities on his property, creating the Profit. His 1984 conveyance did not transfer the Profit. Instead, the conveyance expressly transfers only his "vendor's interest"—a specific type of interest that does not include the Profit. The Profit remained reserved by Osborne and continued to be reserved until it was subsequently transferred to Saunders in 2024. This Court should deny the motion.

## INTRODUCTION

Defendants seek to dismiss Plaintiff's complaint based on one sole issue: the 1984 conveyance from Osborne to Quadco Rock & Paving, Inc. (the "1984 Deed"). Defendants argue that the Profit was not reserved either expressly or implicitly in the 1984 Deed, relying on two misplaced pieces of "evidence:" (1) the 1984 Deed referenced "hereditaments," thereby incorporating "all non-possessory interests;" and (2) "by transferring all his interests as vendor…



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Mr. Osborne unambiguously transferred any Profit to Quadco." (*See* Def. Mot.) Defendants' arguments fail for three reasons. First, the 1984 Deed reserved the Profit by explicit reference to the instrument which created it. Second, the "hereditaments" phrasing was part of the general fee simple conveyance, which was then "subject to" the instrument creating the Profit. And third, a vendor's interest is a term of art describing a financial, security interest in property that does not encompass an easement such as the Profit.

## STATEMENT OF FACTS

The Disputed Area at issue in this case has a long and complicated history of conveyances. Relevant for the purposes of this response is a 1983 land sale contract between past owners the Osbornes and Hildebrands and the 1984 conveyance between Osborne and Quadco (a gravel company).

On March 15, 1983, Osborne entered into a land sale contract with H. Fred Mickelson and D. Joan Mickelson (Comp. Ex. G.) Within that land sale contract was a "Non-Remonstrance as to Quarry Operation" provision wherein the Mickelsons acknowledged that Osborne was and had been operating a quarry, that Osborne reserved the right to continue and expand the quarry operation, and that Osborne had the right to conduct reclamation activities on the Property. *Id.* Osborne also referenced a reclamation plan already filed with the Oregon Department of Geology and Mickelson acknowledged that Osborne "shall be entitled to the exclusive use and benefits of the gravel…without cost, offset, payment or liability to Buyer." *Id.* This provision created the Profit at issue in this litigation.

On August 6, 1984, Osborne conveyed a bargain and sale deed to Quadco. (Comp. Ex. I.) That conveyance legally described two tracts of land to be conveyed, subject to certain listed encumbrances including easements, another real estate contract, and two land-sale contracts between the Osbornes and Mickelsons, including the land sale contract from 1983. *Id.* As the 1984 Deed was "subject to" the 1983 land sale contract, Osborne included an explicit grant to Quadco of "all of grantor's vendor's interest in the two Mickelson contracts identified above."



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*Id.* This assigned Osborne's ability to collect payments from the Mickelsons and transferred his security interest and right to reenter the land in the event of a default. Notably, Osborne did not convey his Profit. In 2024, Osborne officially conveyed the Profit to Saunders so Saunders could continue to have a right of entry on the property to conduct reclamation activities pursuant to a DOGAMI permit.

## LEGAL STANDARD

Courts can grant a motion for judgment on the pleadings only when the pleadings affirmatively show that a party seeking relief has no claim. *Rexius Forest By-Products, Inc. v. A&R Lumber Sales, Inc.*, 112 Or App 114, 117, 827 P2d 1359 (1992). Courts cannot rely on any facts that exist outside the pleadings. *Thompson v. Telephone & Data Systems*, 132 Or App 103, 105–06, 888 P2d 16 (1994). "The court must accept the 'well-pleaded allegations of fact in plaintiffs' complaint as true,'" and "must liberally construe the pleadings in plaintiffs' favor. *Kramer v. Conatser*, 341 Or App 568, 571, 576 P3d 507 (2025) (citing *Smith v. Washington County*, 180 Or App 505, 507, 43 P3d 1171 (2002)). Notably, motions for judgment on the pleadings are not favored by law because they "can conflict with the policy of ensuring litigants a full and fair opportunity to try their claim or defense." *Thompson v. Telephone & Data Systems*, 130 Or App 302, 309, 881 P2d 819 (1994).

## RESPONSE

### I. Osborne's Profit Was Reserved in the 1984 Deed

The 1984 Deed was a bargain and sale deed between Osborne as grantor and Quadco as grantee. (Comp. Ex. I). As Defendants point out, conveyances of real property pass along "the estate of the grantor, unless"—critically—"the intent to pass a lesser estate appears by express terms, or is necessarily implied in the terms of the grant." ORS 93.120. Defendants state that the 1984 Deed did not "expressly or impliedly reserve[e] the alleged Profit." (Def. Mot. at 6). Defendants are wrong and their motion fails.



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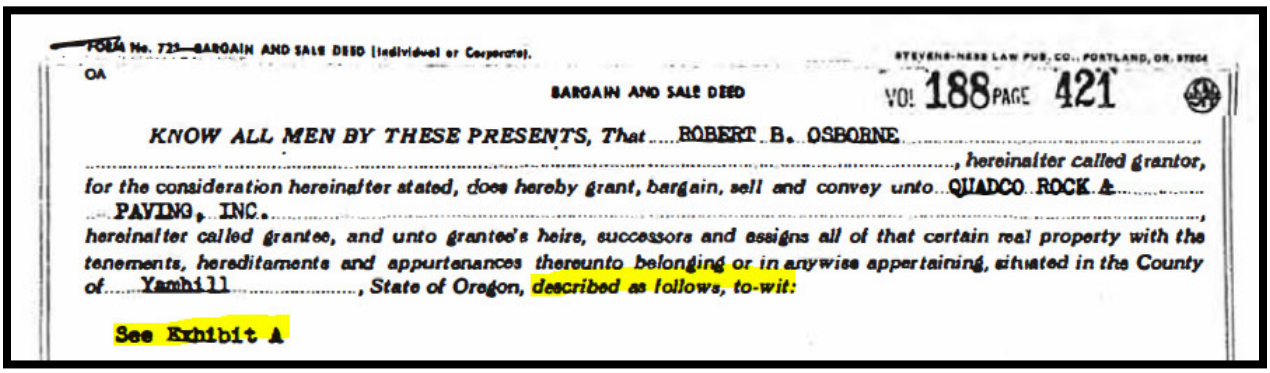
### A. The Deed's "Comprehensive Language" Specifically Excludes the Profit Reservation and Other Easements

The 1984 Deed is a bargain and sale deed. (*See* Comp. Ex I). "A bargain and sale deed provides only that a grantor 'conveys' property." *Outback Properties, LLC v. Johnson*, 225 Or App 366, 372, 201 P3d 246 (2009). "The essential purpose of a bargain and sale deed is to convey whatever title the seller has, without providing a warranty on the seller's part of the nature or quality of that title." *Winters v. County of Clatsop*, 210 Or App 417, 422, 150 P3d 1104 (2007). Bargain and sale deeds convey "the entire interest in the *described property*." *See Outback*, 225 Or App at 372 (emphasis added).

The 1984 Deed—like almost every statutory warranty deed purporting to convey fee simple title—was subject to certain recorded exceptions contained in the "Exhibit A" property description:



FORM No. 721—BARGAIN AND SALE DEED [Individual or Corporate].
STEVENS-NESS LAW PUB. CO., PORTLAND, OR. 97204
OA

BARGAIN AND SALE DEED

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*KNOW ALL MEN BY THESE PRESENTS, That* ROBERT B. OSBORNE, *hereinafter called grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto* QUADCO ROCK & PAVING, INC., *hereinafter called grantee, and unto grantee's heirs, successors and assigns all of that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County of* Yamhill, *State of Oregon, described as follows, to-wit:*

See Exhibit A

(Compl. Ex. I at 1 (emphasis added).)

Defendants ignore this plain, limiting language and instead argue that the "comprehensive language" of "all of that certain real property with the tenements, hereditaments, and appurtenances thereunto…" somehow "left no doubt" that the Profit was included in the transfer because a profit is generally thought of as a hereditament. However, the language Defendants rely on is not within Exhibit A (describing what interest was actually conveyed), and is instead part of the generic recitals. Exhibit A, in fact, references two tracts of land via legal



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description and what the fee simple transfer was "subject to," including easements and other encumbrances:

> FURTHER SUBJECT to contract of sale by Robert B. Osborne et ux as vendor and H. Fred Mickelson and D. Joan Mickelson, husband and wife, as vendee; which contract was recorded on September 3, 1981, in Film Volume 163, Page 1763 in Deed and Mortgage Records for Yamhill County, Oregon; and further SUBJECT to contract of sale between Robert B. Osborne et ux as vendor and H. Fred Mickelson and D. Joan Mickelson, husband and wife, as vendee, which was recorded on March 15, 1983, in Film Volume 175, Page 1484, Deed and Mortgage Records for Yamhill County, Oregon.

(Comp. Ex. I at 3.)

Dispositive to Defendants' motion, two such "subject tos" for the property at issue (on top of a few easements), were the land sale contracts (from 1981 and 1983) between the Osbornes (as "vendors") and the Mickelsons (as "vendees"). *Id.* The 1983 contract expressly reserved the Profit. (Comp. Ex. G). Thus, the 1984 Deed specifically stated that the conveyance was "subject to" the very instrument which created the Profit.

### B. The Deed Explicitly Conveyed Only Osborne's Vendor's Interest in the Mickelson Contracts—A Term of Art That Does Not Include Easements

Not only did the 1984 Deed expressly state that it was subject to the instrument reserving the Profit, but it also concludes by stating, "By virtue of this conveyance, grantor does hereby assign and transfer all of grantor's *vendor's interest* in the two Mickelson contracts identified above." (Comp. Ex. I (emphasis added).) Defendants attempt to contort this language and present it as further support for their position that Osborne transferred all of his interest, but in doing so they gloss over the actual interest being transferred—Osborne's "vendor's interest." That is telling. A vendor's interest is one of legal title and a security interest for a purchase price; they are often held by banks and creditors. *See generally Bedortha v. Sunridge Land Co., Inc.*, 97 Or App 90, 775 P2d 872 (1989). These rights can even be mortgaged. *See, e.g. Security Bank v. Chiapuzio*, 84 Or App 35, 733 P2d 80 (1987). A vendor in a land sale contract retains



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"two large sticks" out of the proverbial bundle: "(1) the right to receive contract payments, and (2) the legal title in the property securing the purchaser's obligation to make the contract payments" (with the possibility of retaking ownership should the vendee default). *Bedortha v. Sunridge Land Co,. Inc.*, 312 Or 307, 312, 822 P2d 694 (1991). A vendor's interest may be even further split; the personal property interest (receiving the payments) may be severed from the property interest (the security instrument of title). *See Id.*

Osborne could have easily conveyed all of "his" interest, or even all of "grantor's" interest. Instead, however, he explicitly inserted the word "vendor." So when Defendants argue that "By transferring all his interests as vendor in the Contract, Mr. Osborne unambiguously transferred any Profit to Quadco" (Def. Mot. at 7), Defendants misstate the law; a vendor's interest is not an easement, nor a profit, and certainly not *the* Profit. A vendor's interest is a specific type of property interest. Here, the vendor's interest described the holder of title in the two Mickelson land sale contracts and the ability to receive payments from the Mickelsons. Specifically inserting "vendor" and creating a "vendor's interest" cannot be ignored, just as a vendor's interest cannot be expanded to include an easement. Regardless, it cannot be read out in such a way to defeat the facts as Plaintiff has pled them in its complaint.

## CONCLUSION

Not only did the 1984 Deed explicitly state that it was subject to the very contract wherein the Profit was created, it also contained a limiting adjective of "vendor." Because Plaintiff has adequately pled a claim**,** Plaintiff respectfully requests this Court to deny the motion.

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Dated this 15th day of December, 2025.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: *s/ Mario E. Delegato*

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December 2025, I caused to be served the foregoing PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS on the following party at the following address:

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by:

- [x] U.S. Postal Service, ordinary first class mail
- [ ] U.S. Postal Service, certified or registered mail, return receipt requested
- [ ] hand delivery
- [ ] facsimile
- [x] electronic service
- [ ] other (specify) _____

*s/ Mario E. Delegato*
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